

A. G. Contract No. KR98-1873TRN  
ADOT ECS File: JPA 98-140  
Project: RRS-STP-000-6(122)P  
TRACS: SR138 01C  
Section: s/o Monroe St. @ BNSFRR #025-440-M  
s/o Adams St. @ BNSFRR #025-442-B  
s/o Washington St. @ BNSFRR #025-445-W

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

96639

THIS AGREEMENT is entered into 29 AUGUST, 2001, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") the CITY OF PHOENIX acting by and through its CITY MANAGER, (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by City Charter, Chapter II, Section 2.i. to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications for the project, have been prepared by the City and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

NO 24856  
Filed with the Secretary of State  
Date Filed: 08/29/01

Rebecca Boyles  
Secretary of State  
Dick J. Haennewald

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement, to be accomplished by the City, is to remove existing railroad crossing surfaces at 19th Avenue and Monroe Street, Adams Street and Washington Street, all located within the City, and reroute alley traffic according to Project Plan No. P-970186, a copy of which is attached hereto and made a part hereof, and the agreed to lump sum costs are as follows:

Remove Existing Crossing (By Railroad Forces)	\$ 0.00
Traffic Control (By City Plan P970186)	\$ 22,179.00
Total Project	\$ 22,179.00
Federal Aid Funds @ 94.3% of \$22,179.00	\$ 20,915.00
City Funds	\$ 1,264.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure on behalf of and for the City in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the City shall provide proper maintenance at its own costs, (exclusive of maintenance by the Railroad Company of its facilities), such maintenance may include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and

Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the City.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement.

3. This agreement shall remain in force and effect for a period of five (5) years from the date of this agreement or until completion of the work, whichever is the first to occur, provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 293E, Mail Drop 616E  
Phoenix, AZ 85007

City of Phoenix  
Street Transportation Department  
200 W. Washington Street -5th floor  
Phoenix, AZ 85003-1611

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF PHOENIX**, A Municipal  
Corporation, FRANK FAIRBANKS,  
City Manager

**STATE OF ARIZONA**  
Department of Transportation

By Thomas E. Callow  
THOMAS E. CALLOW, P.E., Director  
Street Transportation Department

By Catherine J. Hegel  
CATHERINE J. HEGEL  
Contract Administrator

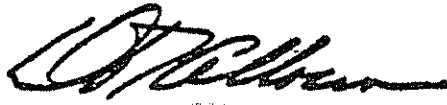
ATTEST:

By Vicky Miel  
VICKY MIEL  
City Clerk

RESOLUTION

BE IT RESOLVED on this 7th day of August 1998, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Phoenix, for the purpose of defining responsibilities for their respective duties for the design, construction, and maintenance if improvements to s/o Monroe Street @ BNSFRR #025-440-M, s/o Adams Street @BNSFRR #025-442-B and s/o Washington Street @ BNSFRR #025-445-W.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.



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DAVID ALLOCCO, Manager  
Engineering Technical Group

for MARY E. PETERS, Director

RESOLUTION NO. 19600

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH THE STATE  
OF ARIZONA THROUGH THE ARIZONA  
DEPARTMENT OF TRANSPORTATION FOR  
MODIFICATIONS TO RAILROAD CROSSINGS ALONG  
NINETEENTH AVENUE AT ALLEYS LOCATED SOUTH  
OF MONROE STREET, SOUTH OF ADAMS STREET  
AND SOUTH OF WASHINGTON STREET.

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BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as  
follows:

SECTION 1. The City Manager is authorized to enter into an agreement  
with the State of Arizona through the Arizona Department of Transportation for  
modifications to railroad crossings along Nineteenth Avenue at alleys located south of  
Monroe Street, south of Adams Street and south of Washington Street.

PASSED by the Council of the City of Phoenix this 28<sup>th</sup> day of March,  
2001.



ACTING MAYOR

ATTEST:

Ticky Miel City Clerk

APPROVED AS TO FORM:

William Beck ACTING  
City Attorney  
DLB

REVIEWED BY:

Frank Sanchez City Manager

2001 MAR 26 PM 3:34  
CITY CLERK DEPT.







APPROVAL OF THE CITY OF PHOENIX ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 22 day of AUGUST, 2000.

Kent T. Reinbold

ACTING  
DIB City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR98-1873TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED August 9, 2001.

JANET NAPOLITANO  
Attorney General

A handwritten signature in black ink, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/698001

Enc.